

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KNOWLINGTON O. BURBAGE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-133-SLR
)	
CITY OF WILMINGTON, MAYOR)	
JAMES BAKER, POLICE DEPARTMENT)	
OF WILMINGTON, DELAWARE,)	
CHIEF MICHAEL SZCZERBA,)	
UNKNOWN SERGEANT,)	
OFFICER LEARY, OFFICER MYERS,)	
)	
Defendants.)	

**MOTION TO COMPEL PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 37(a)(2)(A)**

The Defendants, City of Wilmington, Mayor James Baker, the Wilmington Police Department, Chief Michael Szczerba and Officer Joseph Leary, by and through their undersigned attorney, hereby moves this Honorable Court pursuant to Federal Rule of Civil Procedure 37(a)(2)(A) for an order compelling the Plaintiff, Knowlington O. Burbage, to answer the outstanding discovery in the above captioned matter. Defendants further request that the Court extend the discovery and case dispositive motion deadlines to permit Defendants sufficient time to review the answers provided by Plaintiff and determine whether any further discovery is warranted. In support of their Motion, the Defendants state as follows:

1. Plaintiff Knowlington Burbage filed the Complaint in the above captioned matter on March 2, 2004. (D.I. 2). Plaintiff is proceeding *pro se*, and, upon information and belief, Plaintiff is currently incarcerated at FCI Elkton in Lisbon, Ohio.
2. Defendants filed their First Set of Interrogatories and Request for Production of

Documents directed to Plaintiff and propounded under Federal Rules of Civil Procedure 26(a) and 33 on February 16, 2005. (D.I. 32, 33).

3. The above discovery was served upon Plaintiff via U.S. mail on the above date.

4. Plaintiff's response to Defendants' discovery requests was due on March 16, 2005.

5. On March 21, 2005, Plaintiff filed a Motion for Additional Time "to finish Discovery and Pre-trial motions." (D.I.35). In a letter dated March 21, 2005, Defendants advised the Court that they did not object to Plaintiff's request for an extension of the discovery deadline as Plaintiff had yet to respond to the outstanding discovery. (D.I. 36). By Order dated March 29, 2005, the Court granted Plaintiff's Motion and ordered discovery to be completed by May 16, 2005. The Court further ordered that summary judgment motions shall be filed on or before June 15, 2005. (D.I. 37).

6. Undersigned counsel for the Defendants sent letters to Plaintiff on April 12, 2005 and May 4, 2005 in an attempt to obtain responses to the outstanding discovery. (Att. 1 and 2). Counsel advised Plaintiff that if he failed to provide the requested information in a timely manner, Defendants would file a motion with the Court compelling his response to the outstanding discovery.

7. To date, Plaintiff has failed to answer the discovery, request an extension in which to answer the discovery, or in any way communicate with counsel.

8. The discovery seeks relevant information which is necessary to properly litigate this case. The requests are reasonably calculated to lead to the discovery of admissible evidence.

9. Answering the discovery will expedite the flow of litigation which is essential under the discovery rules.

10. Plaintiff has failed to provide good reason for his failure to respond to the discovery.

11. Defendants waive their right to file an opening brief in support of their Motion given the lack of complex issues of fact or law presented in the within Motion.

WHEREFORE, Defendants' respectfully request that this Honorable Court compel Plaintiff to respond to Defendants' First Set of Interrogatories and Request for Production of Documents. Defendants further request that the Court extend the discovery and case dispositive motion deadlines to permit Defendants sufficient time to review the answers provided by Plaintiff and determine whether any further discovery is warranted.

CERTIFICATION

I, Rosamaria Tassone, attorney for Defendants City of Wilmington, Mayor James Baker, Wilmington Police Department, Chief Michael Szczerba and Officer Joseph Leary certify that I have attempted to confer with Plaintiff, Knowlton Burbage, through the aforementioned communications to secure answers to the above described discovery without Court action, but I have received no response.

/s/ Rosamaria Tassone, (I.D. #3546)

Assistant City Solicitor

City of Wilmington Law Department

Louis L. Redding City/County Building

800 French Street, 9th Floor

Wilmington, Delaware 19801

Defendants, City of Wilmington, Mayor James Baker,

Police Department of Wilmington, Chief Michael

Szczerba and Officer Joseph Leary